



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 3, 2021 which reads as follows:

“G.R. No. 240179 – (MAXIM PHILIPPINES OPERATING CORPORATION, *petitioner* v. FIRST ORIENT DEVELOPMENT AND CONSTRUCTION CORPORATION, *respondent*). – This Petition for Review¹ filed by Maxim Philippines Operating Corporation (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeks to annul and set aside the Decision² dated August 10, 2017 and its Resolution³ dated June 13, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 130036 denying the Motion for Reconsideration thereof.

On September 28, 2012, First Orient Development and Construction Corporation (respondent) filed with the Construction Industry Arbitration Commission (CIAC) a request for arbitration with a complaint for the payment of retention fee in the amounts of ₱22,090,888.81, variation works for ₱456,402.67, costs for security and common services for ₱823,801.32, and ₱1,000,000.00 as arbitration expenses and attorney’s fees.⁴ Respondent’s claims arose from its service contract with the petitioner for works relating to “Facility Expansion PO3 Civil, Structural, Architectural; Plumbing/Sanitary & Exterior Works” for the contract price of ₱400,908,888.00.⁵

Based on the parties’ allegations, the following issues were formulated to be determined by the CIAC:

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¹ *Rollo*, Vol. 1, pp. 3-56.

² *Id.* at 62-80; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Romeo F. Barza and Pablito A. Perez.

³ *Id.* at 85-86.

⁴ *Id.* at 5-6, 90, *id.*, Vol. 2 at 985-995.

⁵ *Id.* at 63.

1. Was there substantial completion of the Project? If so, when?
 - 1.1. Does the Certificate of Substantial Completion issued by the Construction Manager, TCGI Engineers, have legal or binding effect on Respondent? If so, what is the effect thereof?
 - 1.2. What is the percentage of Claimant's work accomplishment as of 31 December 2011 and during the various stages of the construction of the Project?
 - 1.2.1. When was the punch list issued to Claimant?
 - 1.2.2. Were there outstanding punch list items not yet corrected/performed after 31 December 2011? Have they been corrected/performed and if so, when?
2. Was there a final acceptance of the Project in accordance with the Contract?
 - 2.1. Was there partial occupancy and hand-over keys to certain areas in the Project? If so, when and what are the effects thereof?
 - 2.2. Does the Certificate of Substantial Completion constitute final acceptance, as if final acceptance is defined under the Contract?
3. Is Respondent entitled to its claim for Liquidated and Ascertained Damages? If so, how much?
 - 3.1. Did Claimant incur delay in the Project?
 - 3.1.1. Did Respondent authorize the extension of time to complete the Project?
 - 3.1.2. Was Claimant entitled to an extension of time to complete the Project? If so, how many days?
 - 3.2. Is Respondent entitled to apply the Retention Fee to cover the Liquidated and Ascertained Damages due from Claimant?
4. Is Claimant entitled to the release of the retention money? If so, how much?
 - 4.1. Did Claimant comply with the requirement for issuance of a guarantee bond?

5. Is Claimant entitled to its claim for payment of the variation works and other variation works (unreconciled)? If so, how much?
 - 5.1. What is the basis of Claimant's claim for variation works?
 - 5.2. How should the deductive works be computed and how much is the total amount of deductive works?
 - 5.3. How should the additive works be computed and how much is the total amount of additive works?
6. Is Respondent entitled to its claim for overpayment?
7. Is Claimant entitled to its claim for payment of Respondent's share on Security and Other Common Services?
8. Is Respondent entitled to its claim for litigation expenses?
9. Who between the parties is entitled to an award of attorney's fees?
10. Who between the parties shall bear the cost of arbitration?⁶

On April 30, 2013, the CIAC rendered its *Final Award*⁷ in favor of the respondent, *viz.*:

WHEREFORE, based on the foregoing premises, judgment is hereby rendered in favor of the FIRST ORIENT DEVELOPMENT CORPORATION ordering MAXIM PHILIPPINES OPERATING CORPORATION to pay to FIRST ORIENT DEVELOPMENT CORPORATION as a total Judgment in the amount of P37,586,166.96.

This amount shall earn interest at the rate of 6% per annum from the date of this Final Award, and 12% per annum of the entire award, inclusive of accrued interest, from the time it becomes final and executory until the Final Award is fully satisfied.

SO ORDERED.⁸

In resolving the petitioner's Complaint, the CIAC first made a determination that TCGI Engineering (TCGI) is the petitioner's authorized representative, with the power to act on all technical matters relating to the project, as well as the authority to issue and approve variation orders pursuant to the Service Contract.⁹

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⁶ Id. at 102-103.

⁷ Id. at 90-130; rendered by Chairperson Ramon F. Allado and co-Arbitrators Salvador P. Castro, Jr. and Custodio O. Parlade.

⁸ Id. at 130.

⁹ Id. at 71.

The CIAC then determined that respondent's work is at 90.11% completion as of December 2011; and that there was substantial completion of the project based on the certificate issued by TCGI on March 6, 2012. With respect to the unfinished works, the CIAC held that the petitioner prevented the respondent from completing the same. As a result, pursuant to Article 1186 of the Civil Code, the work is deemed completed and the Service Agreement terminated, without the need for the issuance of a certificate of final acceptance by the petitioner. Consequently, following Article 1234 of the Civil Code, the respondent may recover as though there has been strict and complete fulfillment, less damages suffered by petitioner. Likewise, the respondent is entitled to the release of the ₱22,090,888.81 retention money less ₱2,209,088.88 which represents the amount necessary for the petitioner to correct the deficiencies which the respondent failed to rectify.¹⁰

The CIAC also found no basis in the petitioner's claim for overpayment. On the contrary, it held that the petitioner is liable for variation orders executed and completed in the amounts of ₱15,182,225.67 and ₱456,402.67, having failed to present any evidence showing that they are without approval.¹¹

With respect to costs for security and common services, the CIAC held that there is merit in the respondent's claim, holding that industry practice dictates that it is the owner of the project which should collect from the other contractors their proportionate share of these expenses and not the respondent, as it is the former which has a privity of contract with these contractors.¹²

Finding no bad faith on the part of the respondent, the CIAC refused to award litigation expenses in favor of the petitioner. However, it granted attorney's fees in favor of the respondent as it was compelled to arbitrate in order to collect what is due to it under the Service Contract. With respect to the arbitration costs, the CIAC adjudged that under the terms of reference and the CIAC rules, the petitioner must shoulder 80% and the respondent 20% of the costs; with this, the respondent made an overpayment of ₱241,937.37 which petitioner must reimburse.¹³

Aggrieved, the petitioner filed a petition for review under Rule 43 of the Rules of Court before the CA.

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¹⁰ Id. at 71-73.

¹¹ Id. at 73.

¹² Id.

¹³ Id. at 73-74.

On August 10, 2017, the CA rendered its Decision,¹⁴ the dispositive portion of which reads:

WHEREFORE, the petition is PARTLY GRANTED. The final award issued by the Construction Industry Arbitration Commission promulgated on April 30, 2013 in CIAC Case No. 35-2012 is MODIFIED as follows:

1. The monetary claims awarded to First Orient Development and Construction Corporation, namely: a) Security and Other Common Services in the amount of P823,801.32; b) Attorney's Fees in the amount of P1,000,000.00; and c) Reimbursement of arbitration cost in the amount of P241,937.37 are DELETED; and

2. The monetary award in favor of First Orient Development Corporation in the amount of P35,520,428.27 shall earn interest at the rate of 6% per annum from the date of this Final Award until finality of judgment, and 6% per annum of the entire award, inclusive of accrued interest, from the time it becomes final and executory, until the Final Award is fully satisfied.

SO ORDERED.¹⁵

The CA held that the CIAC was correct in holding that TCGI is the petitioner's authorized representative. TCGI is in the best position to determine the status of the project's completion considering that it prepares the weekly progress reports and is in constant communication with the respondent. Thus, the CA concluded that the certificate of substantial completion issued by TCGI is valid and binding on the petitioner even though it does not contain the signature of Mr. Orlando Longakit (Longakit), the Project Manager.¹⁶

With respect to other issues pertinent to project implementation under the Service Contract, the CA affirmed the CIAC. The CA recognized that the CIAC has the necessary expertise to decide disputes involving construction contracts, over which the courts should not interfere.¹⁷

The CA, however, modified the CIAC award regarding security and common services costs, litigation expenses and attorney's fees, arbitration costs, and interest on the monetary award. The CA ordered deleted the award for security and common services costs for failure of the respondent to prove its claim and the CIAC to substantiate its

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¹⁴ *Rollo*, pp. 62-80.

¹⁵ *Id.* at 79-80.

¹⁶ *Id.* at 66,76.

¹⁷ *Id.* at 76-78.

statement that industry practice justifies the imposition of such liability. Anent the rest of expenses that attended this suit, the CA deemed it proper for each party to bear its own costs.¹⁸ Finally, in accordance with the Court's ruling in *UPSI Property Holdings, Inc. v. Diesel Construction Co., Inc.*,¹⁹ the CA modified the interest on the monetary award.

The petitioner filed a Motion for Reconsideration but the same was denied by the CA in its Resolution²⁰ dated June 13, 2018.

Thus, this Petition for Review on *certiorari*, whereby the petitioner raises the following grounds in support thereof:

I.

THERE IS NO CLEAR RULE ON THE EXTENT TO WHICH THE COURT OF APPEALS CAN REVIEW AN AWARD RENDERED BY PRIVATE INDIVIDUALS APPOINTED UNDER THE CIAC RULES.

II.

THE COURT OF APPEALS DECIDED ON QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH THE DOCTRINE THAT ARBITRAL AWARDS MAY BE REVIEWED WHEN THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

III.

THE COURT OF APPEALS DECIDED ON QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH THE DOCTRINE THAT ARBITRATION PROCEEDINGS ARE EVIDENTIARY.

IV.

THE COURT OF APPEALS SHOULD NOT HAVE RELIED ON THE SUPPOSED EXPERTISE OF THE CIAC AND SHOULD HAVE REVIEWED THE FINDINGS OF THE ARBITRAL TRIBUNAL.²¹

The petition is *not* meritorious.

It is an oft repeated rule that in a petition for review on *certiorari*, the Court can only resolve questions of law. The Court will not entertain factual issues except when compelling reasons exists, as when the "factual findings were drawn from a vacuum or arbitrarily reached, or

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¹⁸ Id. at 78.

¹⁹ 740 Phil. 650 (2014).

²⁰ *Rollo*, pp. 85-86.

²¹ Id. at 32.

are grounded entirely on speculation or conjectures, are conflicting or are premised on the supposed evidence and contradicted by the evidence on record or when the inference made is manifestly mistaken or absurd.”²² In this case, none of these reasons exists. On the contrary, the Court finds that the CA was correct in affirming the ruling of the CIAC which is based on cogent legal grounds and are supported by substantial evidence.²³

With respect to the first assignment of error, the Court notes that there is nothing novel in the issue. The Court has previously ruled that the CIAC is a quasi-judicial body whose jurisdiction is confined to construction disputes. Owing to the fact that it resolves only specific matters, the Court recognized that the CIAC has an acquired expertise on issues which fall under its jurisdiction. Thus, its factual findings, more so when they are affirmed by the CA, are generally accorded not only respect but finality by the Court.²⁴

The CIAC is an arbitral machinery created by Executive Order No. 1008. Disputes within its jurisdiction are resolved by arbitrators who are chosen on the basis of their competence and reputation. These arbitrators are not permanently employed by the CIAC and render services only when called to arbitrate for each dispute.²⁵ The resolution of controversies which fall under the CIAC’s jurisdiction are done by these arbitrators nominated and/or chosen in accordance with the CIAC rules. Upon their appointment and while in the performance of their functions in accordance with the CIAC’s authority under the law, they are, in essence, the embodiment and representation of CIAC, as they are the ones which exercise the latter’s quasi-judicial powers. Necessarily therefore, it is their ruling that is elevated and brought on appeal and are accorded respect and finality by the court. In view of the foregoing, the petitioner’s assignment of error that “the Court cannot review the award of these private individuals,” albeit craftily worded, is misguided and misleading.

In *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*,²⁶ the Court reiterated its policy enunciated in previous cases that it will not pass upon factual issues no matter how disguised they might be as legal questions. The parties who chose to submit to arbitration are bound by the issues of facts previously presented and argued before the Arbitral

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²² *NHA v. First United Constructors Corp.*, 672 Phil. 621, 658 (2011).

²³ *Werr Corporation International v. Highlands Prime, Inc.*, G.R. Nos. 187543, 187580, February 8, 2017.

²⁴ *NHA v. First United Constructors Corp.*, supra.

²⁵ Section 14, Construction Industry Arbitration Law, Executive Order No. 1008.

²⁶ 648 Phil. 342 (2010).

Tribunal. The Court will not permit the parties to litigate these matters which have already been passed upon, in the absence of a clear showing that “the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction.”²⁷

A review of the assailed Decision of the CA shows that it was correct in relying upon the decision of the CIAC. The Court finds no grave abuse of discretion on the part of the CIAC as petitioner suggests. The CA decision must consequently be upheld.

The Court agrees with the CIAC’s determination that TCGI, as construction manager, has the authority to act for the petitioner on construction issues that is the subject of dispute.

Under the Service Agreement, the petitioner must appoint its authorized representative who shall have the authority to act and decide on its behalf with respect to technical issues. Nonetheless, despite its representation that Project Manager Longakit and/or Facilities Manager Mr. Elvico Gumban (Gumban) are its authorized representatives, the records are bereft of evidence designating them as such.²⁸

While in the same manner, TCGI has not been expressly designated by the petitioner, its duties and participation vis-à-vis the other persons suggested by the petitioner as its authorized representatives, implies that it possesses the power of being such a representative. Under Appendix 4 of the Service Contract, only TCGI is empowered to issue variations. Several instances relating to the project, such as the basis for the stipulated cost of project and scope of works, were made in reference to documents issued by TCGI. These actions by TCGI were not repudiated by the petitioner. Whereas, there is no evidence that either Longakit or Gumban, which the petitioner submits as their authorized representatives, have performed or acted out the duties of an authorized representative with respect to technical matters related to the Project.

As correctly found by the CA, in the absence of an expressly designated authorized representative indicating otherwise, under the premises, TCGI is in the best position to determine the extent of work completed because of its involvement in the actual construction project and constant interaction with the respondent. The execution of the

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²⁷ Id. at 352-353.

²⁸ *Rollo* p. 104.

certificate of substantial completion in this case is in fact just a collation of the weekly progress reports which TCGI prepares and the petitioners do not contest.

With the authority of TCGI settled, its acts for and in behalf of the petitioner and pertinent to the determination of the rest of the issues relating to the delay, retention fee, and liquidating and ascertained damages connected therewith must be upheld. Primarily, these issues are essentially factual in nature and require the re-evaluation of evidence. This Court is not a trier of fact. The CIAC and the CA were unanimous in the underlying facts and the conclusion drawn therefrom relative to the same. In the absence of compelling reason in this case, their findings must be upheld.

The Court likewise finds that the CA was correct in reversing the ruling of the CIAC with respect to the payment of security of common costs. "Industry practice" are not magic words in that when invoked they would automatically justify an allegation which it supports. The term connotes a factual conclusion that must still be supported by evidence and established as a fact²⁹ particularly when the obligation sought to be enforced is based on such "practice" alone, unsupported by an underlying contractual stipulation.³⁰ In construction disputes, the CIAC's findings must be supported by substantial evidence.³¹

Anent the payment of litigation expenses, attorney's fees, and arbitration costs, the same being in accord with law and jurisprudence, they must be upheld.

Finally, as to the payment of interest on the monetary award, the Court deems it relevant to state that the imposition of interest from the issuance of the CIAC decision partakes of the nature of compensatory interest. Compensatory interest is "that which is allowed in actions for breach of contract or tort for the unlawful detention of money already due."³² This type of interest may be imposed by law or by the courts as penalty or indemnity for damages.³³ When imposed upon unliquidated claims, the interest is reckoned from the date of the judgment by the

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²⁹ Cf. *Werr Corporation International v. Highlands Prime, Inc.*, supra note 23 at 427.

³⁰ *Id.*, *R.V. Santos Company, Inc. v. Belle Corporation*, 696 Phil. 96, 116 (2012), *Advanced Foundation Construction Systems Corp. v. New World Properties and Ventures, Inc.*, 525 Phil. 33, 54-55 (2006)

³¹ *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, 576 Phil. 502, 531 (2008).

³² *PCIB v. William Golango Construction Corporation*, G.R. No. 195372, April 10, 2019, citing *Mendoza v. Sps. Gomez*, 736 Phil. 460, 485 (2014).


³³ *PCIB v. William Golango Construction Corporation*, *id.*

court or quasi-judicial body granting the claim as it is only such time that the amount is determined with reasonable certainty.³⁴ In this case, having found merit in the respondent's claim for payment of retention money and variation works which the petitioner refused to pay; the imposition of compensatory interest upon the monetary award is in order.

WHEREFORE, premises considered, the instant petition for review on *certiorari* is **DENIED**. Accordingly, the Decision dated August 10, 2017 and the Resolution dated June 13, 2018 of the Court of Appeals in CA- G.R. SP No. 130036 are hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *for*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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³⁴ Id.

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